IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1250/07

Neelam Sharma

Versus

Shri Ganga Das Irrigation System

DATE OF ORDER :: 10/12/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Anoop Dhand, for petitioner
Mr. Anil Upman, for respondent

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Instant petition has been filed by accused-petitioner assailing order dated 27th June, 2007 whereby application filed by her during pendency of appeal u/s.391 Cr.P.C. was rejected by court of appeal.

Petitioner after facing trial for offence u/s.138 of Negotiable Instruments Act, was finally held guilty and convicted by learned trial Judge vide judgment dated 30th January, 2006. Against the said order, petitioner preferred appeal and during its pendency, application was filed by her u/s.391 Cr.P.C. to summon Surendra Kumar, who was officer of the Bank at the relevant point of time when cheque was dishonoured. Learned Judge in his order impugned observed that Surendra Kumar was summoned during trial and he appeared on 7th January, 2005 and since by that time, he had

retired, he has shown his inability to produce the record. Taking note thereof, he was discharged from recording his evidence. As a consequence whereof, the officer of the Bank who was posted at the relevant point of time DW-6 Ashok Kumar his statement was recorded and he produced the xerox copy of record which was desired by petitioner and statement of DW-2 Prahlad Rai was also recorded.

It is not the case of petitioner that oral testimony of Surendra Kumar who was officer posted at the relevant point of time alone will show its justification when cheque was dishonoured since it was based on record and the officer Mr. Ashok Kumar, who was posted at the relevant point of time was summoned and he produced the record and placed the same before learned trial Judge and the same has been taken note of while passing final judgment.

This court does not find any infirmity in the order impugned which may call for interference.

Consequently, the misc. petition fails and is hereby dismissed. Record be sent back to learned appellate court forthwith, who is directed to finally dispose of appeal expeditiously.

[AJAY RASTOGI],J.